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No. 94-1085

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

BEVERLY LESNICK, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF STANLEY S. LESNICK,

Petitioner,

v.

HOLLINGSWORTH & VOSE COMPANY,

Defendant-Respondent,

and

LORILLARD, INC.,

Defendant.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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ARGUMENT

Respondent, Hollingsworth & Vose Company ("H&V"), has filed a Brief in Opposition to the Petition for Writ of Certiorari. In its Brief, H&V denies that the opinion of the court below conflicts with *Tobin v. Astra Pharmaceutical Products, Inc.*, 993 F.2d 528 (6th Cir.), *cert. denied*, 114 S.Ct. 304 (1993), and *Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534 (11th Cir.), *cert. denied*, 113 S.Ct. 2334 (1993). H&V argues that the ground for distinction between the instant case and those two opinions is that H&V exercised no control over the means of distribution of the finished

cigarette into which its filter media was incorporated, while defendants in the cited cases did exercise some means of control. This contention utterly misperceives the clear basis of the opinion below – that although H&V cooperated with Lorillard to produce a cigarette with successful national sales, the failure to prove that H&V acted specifically with Maryland in mind is fatal to the exercise of personal jurisdiction there.

Further, the argument put forth by H&V, if a correct interpretation of the opinion below, reinforces the need for grant of certiorari in the instant case. H&V advances the view that the Fourth Circuit Court of Appeals was correct in finding an absence of personal jurisdiction because the *sine qua non* to a finding of "purposeful availment" is some measure of control of a product's distribution system. It is plain, however, that this Court's cases in the area have never imposed such a requirement. It is precisely this misunderstanding of this Court's decisions, particularly the plurality in *Asahi Metal Industry Co., Ltd., v. Superior Court of California, Solano County*, 480 U.S. 102 (1987), that cries out for review of the Fourth Circuit opinion.

H&V spends much time in its Brief in Opposition portraying Petitioner's position as one dependent upon imputing Lorillard's marketing decisions to H&V. Nothing could be further from the truth. Petitioner asserts that jurisdiction is proper over H&V because of H&V's actions well before the distribution stage. H&V's absence of control over the distribution of Lorillard's finished product is irrelevant here, given the depth of H&V's involvement in the production of a cigarette sold nationwide. Neither is it Petitioner's position that the closeness between H&V and Lorillard made Lorillard a *de facto* agent of H&V for jurisdictional purposes. Rather, Petitioner asserts that H&V's virtual partnership with Lorillard in designing a cigarette filter that would be a national seller establishes that H&V intended to purposefully avail itself of the national market.

As the plurality in *Asahi* implicitly recognized, getting a product to market includes much more than simply controlling a system of distribution. That is why the *Asahi* plurality included the design of a product in its examples of "addtional conduct" that may prove an intent to purposefully avail oneself of the market in a forum. 480 U.S. at 112. Here, the abundance of evidence show-

ing, among other things, H&V's intimate involvement in the development of the filter used on the Kent cigarettes and its efforts to refine the filter to gain the widest possible consumer acceptance established that H&V engaged in conduct intended to take advantage of the cigarette market in all of the states, including Maryland.

Finally, H&V ignores the record and misrepresents the nature of Petitioner's argument in asserting that Petitioner seeks a rule allowing exercise of personal jurisdiction over the supplier of a component part anywhere the finished product is sold. As the courts below recognized, H&V was far from a mere component part supplier. *See* Appendix to Petition for Writ of Certiorari at 14a-15a, 23a-24a. Indeed, the district court found that H&V and Lorillard "... did jointly meet and do everything they could to work together to develop, manufacture, and sell." *Id.* at 24a. Petitioner advocates merely that she should be permitted to sue a party that is intimately involved in bringing a product to market in any state in which the product is distributed, notwithstanding the party's absence of control over the distribution system. Such a rule would be entirely in keeping with this Court's precedents on the issue of the constitutional exercise of personal jurisdiction.

For the foregoing reasons, as well as the reasons contained in the Petition for Writ of Certiorari, Petitioner, Beverly Lesnick, respectfully requests that the Petition be granted.

Respectfully submitted,

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